If they are irrelevant, or mere repetition of what is already in English authorities, the citation of them is of course a waste of time; so is the citation of irrelevant English authorities; but if they are relevant, they may be of the highest value, not only for the intrinsic excellence of the judgments, monuments often of industry, learning, and genius, but as independent commentaries on the principles of the English common law or equity developing under new conditions among a 'noble and puissant nation.' Lord Halsbury was of course quite right in declining to receive them as of equal authority with the decisions of our own courts; but this is no disparagement to their juristic excellence, which, for the rest, has been many times acknowledged from the bench in reported judgments and dicta."

THE LAW SCHOOL.

LECTURE NOTES.

[These notes were taken by students from lectures delivered as part of the regular course of instruction in the School. They represent, therefore, no carefully formulated statements of doctrine, but only such informal expressions of opinion as are usually put forward in the class-room. For the form of these notes the lecturers are not responsible.]

FORBEARANCE TO SUE AS CONSIDERATION FOR A PROMISE. — (*From Prof. Keener's Lectures.*) — The essence of consideration is detriment to the plaintiff. The plaintiff has suffered detriment when he has *given up a right.* Therefore, whenever one has *a right* to sue, forbearance is a good consideration.

Now, when does one have *a right* to sue? There are three possible views.

(*a*) One view is that a man can invoke the aid of the law only when he has a good cause of action. He has no right to come into court unless he can succeed. The province of the court is simply to protect rights.

(*b*) The second theory gives a man a right to appear when the case is really doubtful, either in law or in fact. He can come into court and find out the truth of the matter. The court is an arbitrator to settle differences.

(*c*) A third idea is that any man can appear in court who *honestly believes* that he has a cause of action. The court is bound to give a hearing to every man who appears *bona fide.*

Historically the first view is correct. For a party coming into court has to succeed or pay costs. Costs are regarded as compensation for the wrong done to the opposite party in invoking the aid of the law against him without any good cause of action. And in early times a defeated suitor had to pay a fine to the king in addition to the costs of the action.[1]

The third view, however, is that on which the English courts act.[2] *Callisher* v. *Bischoffsheim*[3] stands in England to-day for the proposi-

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[1] Bacon, Abr., title Fines and Amerciaments, c; *Beecher's Case,* 8 Coke, 61.
[2] *Miles* v. *New Zealand Co.,* 32 Ch. Div. 266.
[3] L. R. 5 Q. B. 449.

tion that a party has a right to sue when he *believes* that he has a good cause of action. It is enough if the plaintiff can establish that at the defendant's request he forbore to prosecute a claim which he *believed* was well founded. And it is no answer to show that the claim was not well founded, or was not even reasonably doubtful.

Probably the second view is nearer the law in America.[1] It would be safest in this country for the plaintiff to allege that he forbore the prosecution of a claim which was reasonably doubtful. The second view is also the most convenient from the standpoint of public policy.

RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the courts. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

COMMON CARRIERS — CONTRIBUTORY NEGLIGENCE. — A man desiring to ship stock, knew that the only platform provided by the railroad company for that purpose was defective. *Held*, that he was not guilty of contributory negligence in using it, provided there was no carelessness on his own part. A public duty rests upon the company to provide suitable platforms, and it cannot evade its liability because of the knowledge of the plaintiff. *White* v. *Cincinnati Railway Co.*, 12 S. W. Rep. 936 (Ky.).

COMMON CARRIERS — LIMITING LIABILITY. — The plaintiff shipped horses under an agreement limiting the liability of the carrier to cases of negligence, and restricting the damages to one hundred dollars for each horse. By so doing he obtained reduced rates. *Held*, the contract was valid, and the plaintiff should not have been allowed to show that the horses were in fact worth more. *Richmond & Danville R. Co.* v. *Payne*, 10 S. E. Rep. 749 (Va.).

COMMON CARRIERS — LIMITING LIABILITY — FREE PASSES. — An agreement, by one accepting as a gratuity a free pass upon a railroad, to assume all risk of accident which may happen to him while on the train, by which his person may be injured, is valid. The accident was due to the negligence of the servants of the company. The pass was a mere gratuity, and therefore the case does not conflict with *Railroad Co.* v. *Lockwood*, 17 Wall. 367, in which it was held that a similar limitation on a pass given to a drover, who was to accompany his cattle, was invalid; for there the court say the pass was not gratuitous, for it was given as one of the terms upon which the cattle were carried. *Quimby* v. *B. & M. Railroad Co.*, 23 N. E. Rep. 205 (Mass.).

There are only two cases on this subject exactly in point, — *Griswold* v. *Railway Co.*, 53 Conn. 371, in which it was held that the limitation was valid, and *Railway Co.* v. *McGown*, 65 Tex. 643, *contra*.

CONSTITUTIONAL LAW — EQUAL PROTECTION OF THE LAWS. — The defendant was indicted for non-payment of license fee, under a law exacting a fee of one dollar from a physician who had resided for four years in the town where he took out his license, and five dollars from one who had resided a less time. *Held*, that the law was unconstitutional as imposing unequal burdens on citizens. "Class legislation, discriminating against some and favoring others, is prohibited; but legislation which in carrying out a public purpose is limited in its application, if, within the sphere of its operation, it affects alike all persons similarly situated, is not within the amendment." The present case was not within the exception, because the distinction as regards length of residence had no connection with the public purpose of a license law, namely, the protection of the public against charlatans. *State* v. *Pennoyer*, 18 Atl. Rep. 878 (N. H.).

[1] *Cline & Co.* v. *Templeton*, 78 Ky. 550.